



Malinda Miller
One Riverfront Plaza, Suite 800
Newark, New Jersey 07102
Malinda.Miller@lewisbrisbois.com
Direct: 973.856.8014

June 6, 2023

File No. 40542.29

Via ECF

Hon. Zahid N. Quraishi, U.S.D.J.
United States District Court for the District of New Jersey
Clarkson S. Fischer Building and U.S. Courthouse
402 East State Street
Trenton, NJ 08608

Re: **DeRosa v. Gateway Care Center, LLC d/b/a Gateway Care Center n/k/a Shore
Pointe Care Center, et al.** Civil
Action No.: 3:22-cv-2301
Motion Returnable: June 20, 2023

Dear Judge Quraishi:

This firm represents Defendants, Gateway Care Center, LLC d/b/a Gateway Care Center n/k/a Shore Pointe Care Center, Jonathan Rosenberg, and Yehudah Kramer (“Gateway Defendants”) in the above-referenced matter.

Presently before this Court is Gateway Defendants’ Motion for Reconsideration of the Court’s May 12, 2023 Order denying Defendants’ Motion for Dismissal. Pursuant to Local Rule 7.1(d)(3), Defendants respectfully seek leave to file a reply brief to Plaintiff’s opposition filed on June 6, 2023.

Defendants’ present request for leave to file a reply is in good faith and is intended to only respond to the arguments set forth in Plaintiff’s opposition. Defendants’ do not seek to advance new argument or repeat their initial arguments. See Bayer AG v. Schein Pharm., 129 F.Supp. 2d 705, 716 (D.N.J.) (quoting Elizabeth Town Water Co. v. Hartford Cas. Ins. Co., 998 F. Supp. 447, 458 (D.N.J. 1998) (“It is axiomatic that reply briefs should respond to respondent’s argument or explain a position in the initial brief that the respondent has refuted.”)); Dana Transp., Inc. v. Ableco Fin., LLC, No. 04-2781, 2005 U.S. Dist. LEXIS 18086, at *16 (D.N.J. Aug. 17, 2005) (citing Elizabethtown Water Co., 998 F. Supp. at 458) (“The purpose of the reply brief is to respond to the opposition brief or explain a position that the respondent has refuted.”)

There are several arguments raised in opposition which compel Defendants to seek the opportunity to respond, distinguish factually and legally, and clarify to this Court. In short, the opposition paints Defendants’ application as one in which they are seeking a mere “second bite at the

apple.” Defendants dispute this claim and would appreciate the opportunity to further justify and support their position that they have met the standard for reconsideration here. Additionally, the opposition seeks to factually distinguish the present claims against the Defendant nursing facility from those in Estate of Martino v. Canterbury at Cedar Grove, et. al., ESX-L-2028-22 (April 14, 2023). Defendants aver that the present matter is analogous to the issues before the state court in Martino and request an opportunity to present same to this Court. More significantly, however, is Defendants’ fundamental disagreement regarding case law purported to be controlling in the Third Circuit as to the substantive application of the PREP Act. Defendants summarily note that all of the case law cited by Plaintiff in support of this position reviewed the PREP Act under the purview of motions to remand rather than substantively as is this case here. Defendants request the opportunity to distinguish these cases from the issues presented before this Court. Finally, Plaintiff avers that he has satisfied the threshold to plead a claim of gross negligence sufficient to vault the immunities afforded under New Jersey’s COVID-19 Immunity Statute. Defendants again disagree, having already cited recent case law on-point as to this issue, and would request this Court provide them the opportunity to further brief and clarify their position.

For the above reasons, Defendants respectfully request this Court grant this application and permit Defendants leave to file a reply brief in further support of their application for reconsideration.

We thank the Court for its consideration of this request. Should you have any questions or concerns, do not hesitate to contact my office.

Respectfully submitted,

/s/ Malinda Miller

Malinda Miller of
LEWIS BRISBOIS BISGAARD & SMITH LLP

cc: Michael Kasanoff, Esq. (Via ECF)
Robert J. McGuire, Esq. (Via ECF)

Defendants' request for leave to file a reply is GRANTED. Defendants' reply shall be no longer than three (3) single-spaced pages.

IT IS SO ORDERED
s/ Zahid N. Quraishi
Hon. Zahid N. Quraishi
United States District Judge